

**WILTON ZONING BOARD OF APPEALS
THURSDAY October 23, 2014**

A meeting of the Wilton Zoning Board of Appeals was held on Thursday, October 23, 2014 at the Wilton Town Hall, 22 Traver Road, Wilton, New York and was called to order by Chairman O'Brien at 7:00 p.m.

PLEDGE OF ALLEGIANCE

PRESENT: Chairman O'Brien, Christopher Ramsdill, Rocco Angerami, James Deloria, Dean Kolligian, Robert Barrett, Tony McCracken, and Dave Buchyn. Also present were Mark Schachner, Town of Wilton Zoning Board of Appeals Attorney and Mark Mykins, Zoning Officer.

ABSENT: Chris Ramsdill, Rocco Angerami, Tony McCracken and Mark Mykins

MINUTES: The minutes of the last meeting, held on September 25, 2014 were approved, as submitted, on a motion made by Mr. Barrett seconded by Mr. Kolligian. All board members were in favor.

CORRESPONDENCE: None other than those relating to current applications before the board.

RENEWALS:

APPEAL NO. 10-33 Wendy Mongillo for H.O.P.E., P.O. Box 2497, Wilton, New York 12831. Request for an extension of a Special Permit pursuant to Schedule E and Section 129-175 of the Zoning Ordinance for a low cost spay and neuter clinic/veterinary services; property located at 4253 Route 50, Tax Map No. 141.-2-31, zoned RB-1, in the Town of Wilton. Special Permit originally granted on November 30, 2010 for a period of two years, is due for review and renewal.

Ms. Mongillo approached The Board. Chairman O'Brien asked Ms. Mongillo if she would like to renew her Special Permit. Ms. Mongillo said yes.

Chairman O'Brien asked if there were any questions of concerns. The Board asked if there were any issues, there were none.

Mr. Kolligian made a motion to approve Appeal 2010-33 Wendy Mongillo for H.O.P.E., P.O. Box 2497, Wilton, New York, 12831, the request for a Special Permit pursuant to Schedule E and Section 129-175 of the Zoning Ordinance for a low cost spay and neuter clinic/veterinary services; property located at 4253 Route 50, Tax Map No. 141.-2-31, zoned RB-1, in the Town of Wilton, in accordance with all requirements of Section 129-175D, was granted for a period of two years. A condition of this approval is there shall be no overnight boarding of animals. This permit will be due for review and renewal on or before November 30, 2016.

Mr. Barrett seconded the motion. Mr. Zabala, Mr. Barrett, Mr. Kolligian, Mr. Deloria and Chairman O'Brien were all in favor. The motion passed.

NEW BUSINESS:

APPEAL NO. 14-26 Jesse Boucher, P.O. Box 657, Saratoga Springs, NY 12866. Request for an Area Variance pursuant to Section 129-157 of the Zoning Ordinance for requested relief of 4 ft. for front yard setback; property located at 8 Glenburnie Drive, Wilton, NY 12831 Tax Map No. 140.-8-5-14 zoned R-1 in The Town of Wilton.

Mr. Boucher approached The Board and explained he was representing the Oppenneers, the owners of the property and he was from Kodiak Construction. Mr. Boucher stated the homeowners would like to have outdoor living space where they could enjoy morning coffee, afternoon snack, and dinner. Mr. Boucher further explains the home backs up to the Northway and noise has been a major concern, which was why they would like to build a front porch as opposed to a back porch. Mr. Boucher explained it was not possible to have a front porch without seeking a variance because the porch would not be deep enough to have chairs with a table, it would only allow for a narrow porch similar to what they have now.

Chairman O'Brien asked if there were any questions. Mr. Deloria made a comment stating that there were homes on either side of the residence that have pools and decks and the argument that there is too much noise from the traffic doesn't seem to bother the other neighbors. Mr. Deloria further commented that there weren't any other houses in the neighborhood that had front porches. Mr. Deloria asked if there were any correspondence from any or the neighbors. Chairman O'Brien said no. Mr. Barrett said that he lives on a street that backs up to the Northway and he lived on the opposite side of the street and he could attest that everyone who lives on the Northway side put their grills in the driveway and it was quite noisy. Mr. Barrett further explained that they lived across the street

from the Northway and still did everything on their front porch. Mr. Kolligian asked if the neighbors were notified. Chairman O'Brien said yes, there was no feedback.

Chairman O'Brien asked if there were any other questions. There were none.

Mr. Kolligian made a motion to approve Appeal No. 2014-26 the request for an Area Variance pursuant to Section 129-157 of the Zoning Ordinance for requested relief of 4 ft. for front yard setback; property owned by Mr. and Mrs. Oppeneer, located at 8 Glenburnie Drive, Wilton, NY 12831 Tax Map No. 140.-8-5-14 zoned R-1 in The Town of Wilton, was granted because the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community, for the following reasons; 1. The applicant has demonstrated that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the Area Variance because the front porch would be constructed using materials in a style that is consistent with the neighborhood. 2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by an Area Variance because the noise from the Northway prevents the owners from using the rear of the house for quiet outdoor entertaining. 3. The applicant has demonstrated that the requested Area Variance is not substantial because the requested variance is for 4 ft. out of the total 50 ft. required for the front yard setback. 4. The applicant has demonstrated that the requested Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because there will be no pollutants or noise produced by the use of the new front porch 5. The applicant has demonstrated that the alleged difficulty is self-created.

Mr. Barrett seconded the motion. Mr. Zabala, Mr. Barrett, Mr. Kolligian, Mr. Deloria and Chairman O'Brien were all in favor. The motion passed.

APPEAL NO. 14-27 Thomas J. Farone Home Builders Inc., 667 Route 9, Wilton, NY 12831. Request for an Area Variance pursuant to Schedule G, H-1 of the Zoning Ordinance for requested relief of 40 ft. for rear yard setback; property located at 666 Route 9, Wilton, NY 12831 Tax Map No. 140.13-1-1 zoned H-1 in The Town of Wilton.

Chairman O'Brien read a correspondence from the Saratoga County Planning Board. The decision was; No Significant County Wide or Inter Community Impact.

Mr. Steenburgh approached The Board and stated he was representing Farone Home Builders in their request for an Area Variance for a rear yard setback for a garage structure at their proposed residential development located on Route 9. Mr. Steenburgh said the rear yard setback was originally 30 ft., when the zoning ordinance was updated for the Hamlet Zone they doubled the front yard setback, if it abuts a residential parcel. Mr. Steenburgh explained the property did abut a residential parcel; the residence is a considerable distance to the south. Mr. Steenburgh used a map of the site to explain the shape of the residential piece of property located on Northern Pines Road and its relationship to the garages. Mr. Steenburgh continued stating Cannone Properties Inc. owned the piece of property and he believed it would not remain residential for the life of the property. Mr. Steenburgh explained the key to the application was, not only was this residential parcel narrow and long it's not near the residence and there was a 50 ft. wide Niagara Mohawk or National Grid utility easement above Mr. Farone's parcel. Mr. Steenburgh stated that up to Cannone's property there is a utility right of way that has both gas and overhead electric in it. Mr. Steenburgh further stated that no one would be able to develop within that easement for obvious reasons, so ultimately you end up with a 70 ft. setback instead of 20 ft. setback with any potential development on the opposite side of the easement. Mr. Steenburgh stated they were proposing the garages on the site are set in such a way they meet the required distance off the buildings, the town code requires 50 ft. from a residential structure to an exterior garage. Mr. Steenburgh explained they minimalized the number of garages otherwise; they would have created a variance for that situation. Mr. Steenburgh introduced Attorney Donald Zee who represents Thomas J. Farone. Attorney Zee stated the buildings would be mixed-use structures according to the Hamlet Zoning they have to have commercial up to 10% of the square footage. Attorney Zee said in order to comply with that the first floor is not all commercial, there was enclosed parking within the buildings themselves. Attorney Zee further explains the garage bays were really, for storage for the benefit of the people, who are going to have commercial businesses there because a lot of people require storage for businesses. Attorney Zee further explained that one of the businesses that were going to be moving into the facility, once it was approved were Tom Farone's offices. Attorney Zee said as Mr. Steenburgh had indicated because of the location of the National Grid utility easement, which was 50 ft. wide, they didn't believe the variance adversely impacts the character of the neighborhood or it could be achieved by any other methods given the fact they would like to have the storage. Attorney Zee further explained there are garages throughout the corridor, Saratoga Heritage I & II has garages that are close to the utility easement and in fact there was parking underneath the Niagara Mohawk lines and they had obtained those easements from National Grid years ago. Attorney Zee said they didn't think the variance was substantial due to the fact of the proximity of the utility easement and the difficulty may be deemed somewhat self-created because they were asking for storage but they didn't think that should be a key point in denying such a

variance. Attorney Zee further said he thought it would enhance the value of the development, with a mixed-use development like in the town of Malta, the residential portions were occupied and the commercial portions were vacant. Attorney Zee stated he believed the reason they were vacant was in part the lack of storage and lack of flexibility in their design and that was why they were proposing what they were.

Mr. Barrett asked if they were going to use the garages for storage, was there going to be access from the back of the garages. Attorney Zee said there would be access from the back. Mr. Barrett voiced his concern regarding people storing things in the back of the garages between the easement and the building itself. Attorney Zee said they would propose not to and that would be an issue that would be brought up at Site Plan Review. Attorney Zee said just remember the Farones own the property adjacent to that parcel and they wouldn't want the property to be unsightly in the rear because it would impact the tenants in the apartments. Mr. Barrett stated that was his only concern because he knew how businesses pile stuff up behind a building. Mr. Barrett stated he thought the garages were for cars. Attorney Zee said no then explained that during Site Plan approval because we have parking spaces in front of the garages they cannot specifically state that it was for car parking. Chairman O'Brien said they could restrict those themselves. Attorney Zee said they could to a certain degree but because of the nature of the businesses that would be in there, having the ability to have storage for some of their supplies. Attorney Zee stated for example they were talking to a small restaurant/café and they have certain supplies that they can't fit into the space, they would like to have the ability to have them locate their extra supplies, equipment etc. in a garage bay that would actually be a storage bay. Mr. Zabala asked if there were going to be two entryways to each storage unit. Mr. Steenburgh said there would be just an entrance in the front, the access behind would just be to walk behind the buildings. Attorney Schachner stated that there would be access but not double garage doors. Mr. Deloria questioned the parking spaces, he stated the total parking required is 159 spaces and they had provided 152 spaces plus an additional 18 garage spaces and he asked for clarification that the 18 spaces were not included in the two proposed garages. Mr. Steenburgh said they were the 18 spaces and they have excluded them that was the 152 spaces for their total count and The Planning Board was considering the 152 spaces. Mr. Deloria said so you don't meet the required 159 spaces. Mr. Steenburgh said no. Attorney Zee stated that under the Hamlet Zone the Planning Board has met with them on this project for over a year and as a result, under a mixed-use development The Planning Board has the discretion to reduce the number of required parking spaces because some of the units are residential in nature and don't conflict with parking during the daytime with some of the businesses, which allows for some overlapping. Mr. Deloria stated yes, and to that point, that is The Planning Board and this is The Zoning Board and you're saying the garages are not going to be used for parking. Mr. Deloria

wanted clarification that they were not going to then go back to The Planning Board and say they were counting the garages for parking. Both Mr. Attorney Zee and Mr. Steenburgh said they were not going to do that. Mr. Steenburgh explained they had been very clear with The Planning Board on that it was one of the very first items that was discussed with The Planning Board because we have the parking spaces in front of the garages and you can't count those because if someone was parked there, there would be no way to get in or out of that garage bay. Mr. Deloria asked what if you were not granted approval because you have to maintain 159 parking spaces, would you then change your position on the use of the garages. Mr. Steenburgh said he did not believe they could because they have the parking spaces in front of them. Mr. Steenburgh explained there was a parking cell in front of each garage and obviously, you can't block in vehicles. Attorney Zee said what probably happened was on two of the buildings there are 13 parking spaces inside the building and two other buildings have 6 parking spaces and the commercial spaces exceed the 10% requirement of the Hamlet Zoning. Attorney Zee further explained what they would potentially do would be to reduce the commercial square footage and add additional parking within the building but they didn't believe that was what the town really wanted. Attorney Zee stated some of the reasons for having the Hamlet Zone created was to have a variety of commercial types and that's why they wanted some flexibility, if at the end of the day they said no you can't you have to have 7 more parking spaces they would probably put them inside the building. Mr. Deloria asked if the two proposed garages were conceptually there for storage for all four units. Attorney Zee said yes. Mr. Kolligian stated that was one of the conceptions they explained in the beginning was the fact that originally wanted a garage area for all the buildings but because of the way the property divides they couldn't put two more in. Chairman O'Brien voiced his concern regarding what Mr. Barrett brought up about storing things in the back of the garages. Chairman O'Brien said that could lead to a pretty unsightly sight after a while. Attorney Zee said they would have no problem with an approval with the understanding from The Planning Board to forbid any outside storage and they didn't see any problem with that. Chairman O'Brien said The Board could make it part of the variance. Attorney Schachner said The Board could make it a condition not just a request of the variance; it had to be a condition. Both Attorney Zee and Mr. Steenburgh agreed. Mr. Kolligian said he couldn't imagine anyone would want it. Mr. Barrett said it just happens and morphs over a period of time. Mr. Zabala asked if there was an area reserved for storm water management. Mr. Steenburgh said the sight is pretty level; they haven't gotten into the final design of the storm water management area. Mr. Steenburgh explained their basic plan to Mr. Zabala and Mr. Zabala said he was concerned because they were going to allow access behind the buildings. Mr. Steenburgh said it was going to be sloped down and the access was only for someone to get back there, there would be no sidewalks and they weren't encouraging anyone to go back there. Mr. Zabala asked if National Grid had any further conditions or restrictions with the project. Mr. Steenburgh said no.

Chairman O'Brien asked if there were any questions. There were none. Chairman O'Brien asked Mr. Riper, the town engineer, if he had any concerns. Mr. Riper said no, the parking would be addressed at Planning Board level and it had been discussed whether they were counting the parking in front of the bays or in the garage. Mr. Riper said there would be concern over code issues when storing materials in the garage such as, what materials could be stored in the garage. Mr. Kolligian said that was the only thing that was brought up that caused concern further down the road and it had nothing to do with this Board but restaurant specific and extra product or equipment was mentioned and it wouldn't take long for that restaurateur to decide they ran out of space and you have a fryer in the garage that you are going to start schlepping food in and out of and that kind of stuff should not be allowed to happen. Attorney Zee stated that would be regulated by health code. Mr. Kolligian said that everyone was and that's not something that can be over looked. Mr. Kolligian spoke about the concern that The Board had regarding access from behind the garages he said technically no one is allowed access to the National Grid easement and people still snowmobile back there, snow shoe and walk their dogs and they would not have any ability to dictate who would go back there. Mr. Kolligian said if they made it, a condition of the variance that they can't store anything back there it would eliminate anyone from going back there. Mr. Kolligian said The Boards concern was the unsightliness of it and as long as it was a condition of the variance, they would be all set. Attorney Zee said his client owned all the residential units adjoining to the north and they have good occupancy there and part of this was because of the way it was maintained. Attorney Zee further stated the rents were pretty high per unit and they want to maintain that if it became unsightly and unkempt it would bring down the value.

Chairman O'Brien asked if there were any questions. There were none.

Mr. Kolligian made a motion to approve Appeal No. 2014-27 for Thomas J. Farone Home Builders Inc., 667 Route 9, Wilton, NY 12831. Request for an Area Variance pursuant to Schedule G, H-1 of the Zoning Ordinance for requested relief of 40 ft. for rear yard setback; property located at 666 Route 9, Wilton, NY 12831 Tax Map No. 140.13-1-1 zoned H-1 in The Town of Wilton, was granted because the benefit to the applicant outweighs the detriment to the health, safety and welfare of the community, for the following reasons; 1. The applicant has demonstrated that an undesirable change will not be produced in the character of the neighborhood and a detriment to nearby properties will not be created by the granting of the Area Variance because the proposed Area Variance abuts a 50 ft. utility easement of National Grid at the rear of a very deep adjoining residential parcel. Due to these conditions, the variance would be virtually unnoticeable. 2. The applicant has demonstrated that the benefit sought cannot be achieved by some method feasible for the applicant to pursue other than by an Area Variance

because of the required separation between a building and a garage and the depth of the parcel, it cannot be achieved. 3. The applicant has demonstrated that the requested Area Variance is not substantial because the garage will abut a 50 ft. utility easement at the rear of the residential parcel and the residence is over 650 ft. from the property. 4. The applicant has demonstrated that the requested Area Variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood district because of the 50 ft. existing utility easement and proximity to the nearest residence. 5. The applicant has demonstrated that the alleged difficulty is not self- created since Mr. Farone has owned this property for a long time and the zoning laws have changed since he purchased the property. A condition of this approval is there shall be no outdoor storage allowed on any side of the garages.

Mr. Deloria seconded the motion. Mr. Zabala, Mr. Barrett, Mr. Kolligian, Mr. Deloria and Chairman O'Brien were all in favor. The motion passed.

Chairman O'Brien said a date needed to be set for joint November/December meeting. The date will be December 11, 2014.

Mr. Kolligian made a motion to adjourn the meeting at 7:33 pm Mr. Deloria seconded the motion. All board members were in favor. The motion passed.

ADJOURNMENT:

Mr. Mr. Kolligian made a motion to adjourn the meeting at 7:33 p.m. Mr. Deloria seconded the motion. All board members were in favor. The motion passed.

Dated: _____

Amy DiLeone
Zoning Clerk